Filed 3/9/09 P. v. Taylor CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LARRON TAYLOR, Defendant and Appellant.	B202557 (Los Angeles County Super. Ct. No. GA064535)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jacqueline H. Nguyen, Judge. Affirmed.

Cynthia A. Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillete, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, James William Bilderback II and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Larron Taylor of receiving stolen property and of first degree burglary. During jury deliberations, the trial court received a report of alleged juror misconduct. The court interviewed the jurors involved in the alleged misconduct. After questioning the jurors, the court found no prejudicial misconduct. On appeal, defendant contends that the court failed to conduct a sufficient inquiry into the misconduct allegations. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

A. *The burglary of March 8, 2005.*

Christopher and Kathleen Caringella left their home in Rosemead on the morning of March 8, 2005. Kathleen locked the door. When Christopher returned home around 1:00 p.m., the front door was slightly ajar, the freezer door was open and a room had been ransacked. Kathleen's Dell laptop computer and jewelry were missing.

Around 2:00 p.m. that same day, Alma Parker was taking out trash from her home in Monterey Park. A gold and black Chevy car with three Black men drove by, followed by an unmarked police car. The Chevy's rear passenger threw a laptop computer out of the car. Parker stopped a police officer who was passing by. The officer retrieved the computer; it was Kathleen Caringella's laptop.

Christopher Henderson was driving the Chevy, Dyno West was in the front passenger seat and defendant was in the rear. A 13-inch flathead screwdriver, two Nextel cell phones, a computer mouse, a Dell power cord, charger and black gloves were in the car. A small bag containing jewelry was found on defendant.

B. *The burglary of January 31, 2006.*

On the morning of January 31, 2006, officers from the Commercial Crimes Division Field Enforcement Element (FEE)[1] began surveilling a Cadillac Escalade. Christopher Henderson was driving the car and Dyno West was identified as a passenger. Officers followed the Escalade for several hours as it drove through various cities and neighborhoods. They ultimately followed it to a neighborhood in the City of Rosemead, where it stopped on Delta Street. The Escalade's driver, Henderson, went to the front door of a house and knocked. Defendant and Vernon Whitaker got out of the Escalade, knocked on the door and then entered the home. Han Ngo was inside. He was in his bedroom on the second story when someone opened the door. Upon seeing Ngo, two Black men ran.[2] Ngo grabbed a knife and ran outside. He saw a large car drive away fast. Officer Rodolfo Chong saw defendant[3] in the car after it left Ngo's home.

Officers found the Escalade parked at a fast food restaurant. Defendant was arrested at a nearby bus stop. His companions, Henderson and West, were arrested at a nearby bowling alley. They had asked a worker at the alley for the number to a taxi cab company.

Defendant's fingerprints were in the Escalade.

II. Procedural background.

Trial was by jury.[4] On April 20, 2007, the jury found defendant guilty of first degree burglary (Pen. Code, § 459)[5] and of receiving stolen property (§ 496, subd. (a)).

---

1 FEE targets and surveils people believed to be engaged in crime.

2 Ngo told Officer Alvarez that he saw only one Black man.

3 Chong identified Christopher Henderson, Dyno West, Vernon Whitaker and defendant as the car's occupants.

4 Defendant was tried jointly with Dyno West, Vernon Whitaker and Raleigh Henderson.

5 All further undesignated statutory references are to the Penal Code.

On September 20, the trial court sentenced defendant to the midterm of four years for burglary and to a consecutive eight months for receiving stolen property. The court found true an allegation that defendant committed the burglary while on his own recognizance or on bail and sentenced him to an additional and consecutive two-year term under section 12022.1.[6]

This appeal followed.

DISCUSSION

I. Juror misconduct.

Defendant raises one issue on appeal: The trial court prejudicially erred by failing to make a reasonably adequate inquiry into the allegation of juror misconduct. We disagree.

A. *Additional facts.*

The jury began deliberations on April 19, 2007, at 11:30 a.m. After the lunch hour, Henderson's defense counsel raised an allegation of juror misconduct. According to defense counsel, Henderson's uncle, Haziq Muhammad, overheard jurors talking in the parking lot at lunch time. He saw Juror No. 10 and the alternate juror[7] approach Juror No. 6, who was sitting in his truck. The alternate juror said something to the effect of " 'You know they're guilty. They go and knock and see if anyone is home and then the others go in.' " Juror No. 10 agreed, but Juror No. 6 indicated by gesture that they should not be talking. Juror No. 6 also made a comment about a need for documentation, to which the alternate juror replied, " 'No there doesn't need to be any documentation. It's clear they're guilty.' "

---

[6] At the time he committed the current offenses, defendant was on probation in case No. TA072381. After waiving a formal probation hearing, the court imposed a concurrent 16-month term for a violation of section 12031, subdivision (a).

[7] Only one alternate juror was left by the time deliberations began.

The trial court first spoke to the alternate juror. The alternate juror admitted he went to lunch with Juror No. 10. At lunch, he and Juror No. 10 talked about Rosemead, where the alternate juror lived. They talked about how it appeared that Asians and Latinos got along. After lunch, they encountered Juror No. 6 in the parking lot and "some conversations did happen. . . . I can't say it was directly to this case, but in scenarios where if I said something like 'if my car was in the parking lot, why would I want to take a cab?' " Neither juror responded to his comment. He talked to Juror No. 6 about whether the jury was being sequestered. When the court asked him if they discussed the issue of defendants' guilt, the alternate juror said, "The only thing I can remember [is] the jurors might look like they can reach a decision today or tomorrow we'll sleep on it. I think I said 'They're going to sleep on it.' " He denied having an opinion on the case. He did not remember anyone saying they would like to see documentation.

The trial court next questioned Juror No. 10. Juror No. 10 said he went to lunch with the alternate juror, but they did not talk about the case. He corroborated the alternate juror's story that they talked about Rosemead and the relationship between Asians and Latinos. Upon returning from lunch, Juror No. 10 parked his car next to Juror No. 6's truck. When the alternate juror asked if he should come back tomorrow to hear the final decision, Juror No. 6 said he had made his decision, but he did not say what it was. The alternate juror asked the other two jurors to let him know if they found anyone guilty. Juror No. 10 did not remember any comments made about a cab, whether any defendant was guilty, knocking on doors or documentation. Juror No. 10 said he might have made a comment that the case took too long. He told the court that his mind was still open regarding the case.

The trial court interviewed Juror No. 6 last. He, Juror No. 10 and the alternate juror talked about scheduling issues, namely, how long the case would take. He denied that anyone said his mind was made up, although he said he had made his decision. Nonetheless, he said he would still listen to the other jurors and was open to having a

dialogue with them. There was no discussion about the significance of knocking on doors or the need for documentation.

After Juror No. 6 left chambers, Henderson's defense counsel asked the trial court to question Muhammad. The trial court replied that all three jurors contradicted Muhammad's statements. Defense counsel then said that the comment about the cab was clearly a reference to the case. The court said, "Well, that's really not the issue that I'm focused on right now . . . . I think the court has to make a determination as to whether misconduct in this case, if there were any. Whether that somehow impacts the trial, and I think counsel then has to make a decision on whether you want to request something of the court. Whether you want to have me declare a mistrial or something to that effect. [¶] So I don't know. First of all if you're even working towards that or if you're satisfied based upon the court's inquiry of the three jurors. But all three jurors corroborate each other in terms of number 1, the lack of any substantive discussions concerning this case. The only person who made a comment that arguably somehow relates to the case is the alternate juror who made an offhand comment about 'why would I call the taxi cab.' The other two jurors who are the jurors deliberating not the alternate, but neither of the jurors now deliberating remembers anything about that. [¶] The other thing is they all three said that the main discussion that pertain[s] or relates to this case relates to the scheduling. The fact that obviously this has been a very long trial the jurors are concerned[,] [u]nderstandably because some of them are not being paid and they're wondering how much longer that lasts. All three jurors are consistent in terms of our discussions about scheduling or being concerned. And expressing comments about 'How much longer is this going to last?' Or as Juror number 6 said, 'I've already been at it for three weeks now, and I'm going to go have a decision.' But he said that he's still . . . keeping an open[ ] mind. And that's what the instruction calls for. [¶] So you asked the court to do an inquiry of this other witness. I don't know what difference that is going to make at this point to the court or to the counsel. Because his main allegation that the jurors are saying he's guilty or they're guilty, I've made up my mind. That main allegation has now been denied by all three jurors."

All defense counsel moved for a mistrial. After counsel gave their reasons for asking for a mistrial, the trial court continued: "I've had a chance to speak with them both Juror Number 10 and Juror Number 6 clearly speak English as a second language. I'm making that assumption based on their accent and not on their ethnicity. In any way, I was not the judge that conducted the voir dire and didn't get to know these jurors in the same way that I would have gotten to know [them] had I conducted the voir dire. But, you know, obviously they have some language difficulties. And when you speak English as a second language you may understand a lot, but you're not going to be able to articulate it as quickly or as fluently as somebody who [is] a native speaker. [¶] I agree with you that during the court's inquiry that there were pauses in there that they were pondering or trying to recall what the conversations were. I don't see that as being evasive in any manner, but I just see that as trying to look back and think what conversations did we have that now my goodness the judge and all the attorneys are wanting to know about. That's how [their] demeanor really struck me. [¶] The juror, frankly, that I'm a little more concerned about as between the three of them not suggesting that this juror actually had the conversations that he was alleged to have had, but if I was concerned about one in particular juror it would be the alternate more so than the other two. I don't know if counsel would agree with that characterization and I see that [defense counsel for Deon West] is nodding her head in agreement, but he's not one of the jurors deliberating. He made a comment which clearly that relates to a fact in the case. Which is 'well, why would I call a taxi if my car was parked in the parking lot?' That's the one comment that concerns me the most because it references a fact that was presented in the trial[] [a]nd that counsel argued during the course of closing."

"[The prosecutor] did make a point about that, but counsel specifically asked as to Juror Number[s] 6 and 10 if they recall it. And they didn't recall it. And number 6 said that he's made a decision. It doesn't mean that they're not listening. People do have prejudgments. They've sat through it for ten-plus days. Now it didn't mean that his mind is completely closed to what other people are saying. And we couldn't erase their thoughts and feeling and perceptions about their evidence. [¶] What we can ask them to

do is to engage in a dialogue with the other jurors and listen to what people have to say before deciding. This is how you're going to vote and I don't believe Juror number 6 is not able to do that."

The trial court then denied the mistrial motion.

B. *The trial court conducted a sufficient inquiry into the alleged juror misconduct.*

"An accused has a constitutional right to a trial by an impartial jury. [Citations.] An impartial jury is one in which no member has been improperly influenced [citations] and every member is ' "capable and willing to decide the case solely on the evidence before it" ' [citations]." (*In re Hamilton* (1999) 20 Cal.4th 273, 293-294.) A trial court has a duty to inquire into allegations of misconduct during jury deliberations. (*People v. Cleveland* (2001) 25 Cal.4th 466, 476; § 1120 ["If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties in order that the court may determine whether good cause exists for his discharge as a juror"].) Once a court is alerted to the possibility that a juror cannot properly perform his or her duty to render an impartial and unbiased verdict, the court is obligated to make a reasonable inquiry into the factual explanation for that possibility. (*People v. McNeal* (1979) 90 Cal.App.3d 830, 838.) The hearing must be sufficient to determine whether good cause exists to discharge a juror. (*People v. Burgener* (1986) 41 Cal.3d 505, 520, overruled on other grounds in *People v. Reyes* (1998) 19 Cal.4th 743, 753.)

"But not every incident involving a juror's conduct requires or warrants further investigation. 'The decision whether to investigate the possibility of juror bias, incompetence, or misconduct—like the ultimate decision to retain or discharge a juror—rests within the sound discretion of the trial court. [Citation.] . . . [¶] . . . [A] hearing is required only where the court possesses information which, if proven to be true, would

constitute "good cause" to doubt a juror's ability to perform his duties and would justify his removal from the case. [Citation.]' [Citation.]" (*People v. Cleveland*, *supra*, 25 Cal.4th at pp. 478-479.) The decision whether and how to investigate allegations of juror misconduct rests within the trial court's sound discretion. (*People v. Engelman* (2002) 28 Cal.4th 436, 442.)

We see no abuse of discretion in the manner in which the trial court here conducted the inquiry into the allegation of juror misconduct. Defendant takes issue with the court's refusal to question Haziq Muhammad, who told Henderson's defense counsel about the conversation he overheard between the alternate juror, Juror No. 10 and Juror No. 6. The court's refusal, however, to hear from Muhammad directly did not render the inquiry either unreasonable or insufficient. To the contrary, Henderson's counsel repeated what Muhammad told her. It was reasonable for the court to believe that counsel's rendition of Muhammad's statements were accurate. Therefore it is not clear that having Muhammad repeat those statements in person would have aided the inquiry.

Moreover, the trial court separately, and at some length, questioned the three jurors involved in the allegations and allowed defense counsel to question them. (See *People v. Williams* (1997) 16 Cal.4th 153, 232 [suggesting that affording defense counsel an opportunity to ask questions of a potentially compromised juror may support a finding that an inquiry into misconduct is sufficient].) Defendant points to inconsistencies between the jurors' versions of their conversation to highlight the importance of questioning Muhammad. For example, the alternate juror admitted he commented on why the defendants would have called a cab when their Escalade was nearby. The comment concerned the court, but it pointed out that neither of the deliberating jurors remembered the comment. More important, Juror No. 6, who conceded telling the others he had made a decision, agreed he would nonetheless listen to the jurors and keep an open mind. Given the alternate juror's admission he made the statement, nothing Muhammad might have said would have added anything.

Defendant also argues that the alternate juror may have interfered with the deliberating jurors. But the gist of the conversation between the three men, as consistently relayed by them, was that the alternate juror was asking how long deliberations might take. He was not pressuring the jurors to make a decision.

We therefore do not agree that this case is like *People v. Barber* (2002) 102 Cal.App.4th 145, which defendant cites. In *Barber*, after being told the jury was deadlocked at 11 to 1, the trial court asked the jurors whether all were deliberating in good faith. Seven said yes, five said no. (*Id.* at p. 148.) The court then questioned only the jurors who claimed misconduct, which questioning revealed the holdout juror's identity. The court also questioned the holdout juror, who was ultimately dismissed. The Court of Appeal said the hearing was fundamentally unfair because the trial court should have heard testimony from those jurors who said the holdout juror was deliberating in good faith. In contrast, the court here questioned all jurors involved in the alleged misconduct.

In any event, even if we accepted, for purposes of argument only, Muhammad's allegation and found that there was juror misconduct, we would conclude there was no substantial likelihood of bias or prejudice. (*In re Hamilton, supra,* 20 Cal.4th at p. 296 [the verdict will not be disturbed if the entire record indicates "there is no reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were actually biased against the defendant"].) At worst, Juror Nos. 6 and 10 heard the alternate's opinion that the defendants were guilty, based on his reference to evidence presented at trial, i.e., the "taxi" and "knocking on doors" comments. The alleged misconduct did not involve outside influences that might have impacted the jury's deliberations. The evidence referenced by the alternate was presented at trial and its inculpatory nature would have been patently obvious to all jurors, even absent the alternate's comments. The alleged comments were made in a brief exchange; there was no allegation the jurors engaged in a lengthy deliberation outside the jury room. The conversation transpired between jurors and an alternate, not between jurors and a witness or other outsiders. There was nothing particularly compelling about the alternate's

alleged opinion that the defendants were guilty, and nothing suggests the sitting jurors would have given particular credence to his views. Nothing suggests the alternate's statements were likely to, or did, cause either sitting juror to become biased against the defendants or cast a guilty vote. Notably, no juror was alleged to have made any statement indicating pressure to reach a quick verdict.

Indeed, it has been held that conduct demonstrating far less willingness to deliberate is not prejudicial. In *People v. Leonard* (2007) 40 Cal.4th 1370, 1412, for example, a juror announced, at the beginning of deliberations, his view that the defendant was guilty. He then retired to a corner to read a book. Attempts by other jurors to involve the juror in deliberations were unsuccessful. *Leonard* concluded that while the juror's behavior constituted misconduct, it did not prejudice the defendant and did not demonstrate the juror had prejudged the case. (*Ibid.*) Instead, the juror "apparently concluded, based on the evidence presented at trial, that the evidence of defendant's guilt was so overwhelming that there was nothing left to discuss." (*Ibid*.) The allegations here are far less compelling than in *Leonard.* There was no basis in the instant matter from which the trial court could have found the jurors prejudged the case.

We therefore conclude that the trial court neither abused its discretion in conducting the inquiry into alleged juror misconduct nor is there a substantial likelihood of bias or prejudice as a result of any juror misconduct.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.